

all suits in equity and actions at law brought under this section to enforce any liability or duty created by this chapter or any rule, regulation, or order of the Commission thereunder, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that the defendant take such action as is necessary to remove the danger of violation of this chapter or of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Immediately upon instituting any such suit or action, the State shall serve written notice thereof upon the Commission and provide the Commission with a copy of its complaint, and the Commission shall have the right to (A) intervene in the suit or action and, upon doing so, shall be heard on all matters arising therein, and (B) file petitions for appeal.

(4) Any suit or action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherein the defendant may be found.

(5) For purposes of bringing any suit or action under this section, nothing in this chapter shall prevent the attorney general, the administrator of the State securities laws, or other duly authorized State officials from exercising the powers conferred on them by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) For purposes of this section, "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(7) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(8)(A) Nothing in this chapter shall prohibit an authorized State official from proceeding in a State court against any person registered under this chapter (other than a floor broker, floor trader, or registered futures association) for an alleged violation of any antifraud provision of this chapter or any antifraud rule, regulation, or order issued pursuant to the chapter.

(B) The State shall give the Commission prior written notice of its intent to proceed before instituting a proceeding in State court as described in this subsection and shall furnish the Commission with a copy of its complaint immediately upon instituting any such proceeding. The Commission shall have the right to (i) intervene in the proceeding and, upon doing so, shall be heard on all matters arising therein, and (ii) file a petition for appeal. The Commission or the

defendant may remove such proceeding to the district court of the United States for the proper district by following the procedure for removal otherwise provided by law, except that the petition for removal shall be filed within sixty days after service of the summons and complaint upon the defendant. The Commission shall have the right to appear as *amicus curiae* in any such proceeding.

(Sept. 21, 1922, ch. 369, §6d, as added Pub. L. 95-405, §15, Sept. 30, 1978, 92 Stat. 872; amended Pub. L. 97-444, title II, §221, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 102-546, title II, §207(b)(1), (2), Oct. 28, 1992, 106 Stat. 3604.)

#### AMENDMENTS

1992—Pars. (1), (8)(A). Pub. L. 102-546 inserted reference to floor trader.

1983—Par. (8). Pub. L. 97-444 added par. (8).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

#### EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at common law or in equity, see rule 1.

Writ of mandamus abolished in United States district courts, but relief available by appropriate action or motion, see rule 81.

#### § 13b. Manipulations or other violations; cease and desist orders against persons other than contract markets; punishment; misdemeanor or felony; separate offenses

If any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract markets, or otherwise is violating or has violated any of the provisions of this chapter or of the rules, regulations, or orders of the Commission or the commission<sup>1</sup> thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in section 9 of this title, make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse

<sup>1</sup> So in original. The words "or the commission" probably should not appear.

to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of \$100,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 13 of this title, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph (a) or (b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under section 9 of this title. Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.

(Sept. 21, 1922, ch. 369, §6(d), formerly §6(c), as added Pub. L. 90-258, §17, Feb. 19, 1968, 82 Stat. 31; amended Pub. L. 93-463, title I, §103(a), (b), title II, §212(c), Oct. 23, 1974, 88 Stat. 1392, 1404; renumbered §6(d) and amended Pub. L. 102-546, title II, §§209(a)(1), (4), 212(b), Oct. 28, 1992, 106 Stat. 3606, 3609.)

#### REFERENCES IN TEXT

Section 9 of this title, referred to in text, was in the original "subsection (c)" meaning subsec. (c) of section 6 of act Sept. 21, 1922, ch. 369, which is classified to sections 9 and 15 of this title. See Codification note set out below.

#### CODIFICATION

Section is comprised of subsec. (d) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (e) and (f) of section 6 are classified to sections 9a and 9b of this title, respectively.

#### AMENDMENTS

1992—Pub. L. 102-546 made technical amendment to references to section 9 of this title to reflect change in reference to corresponding section of original act and substituted "the higher of \$100,000 or triple the monetary gain to such person" for "\$100,000".

1974—Pub. L. 93-463, §§103(a), 212(c), substituted "Commission" for "Secretary" before "may" and substituted "not more than \$100,000" for "not less than \$500 nor more than \$10,000".

Pub. L. 93-463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

#### EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

#### EFFECTIVE DATE

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

### § 13c. Responsibility as principal; minor violations

(a) Any person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of this chapter, or any of the rules; regulations, or orders issued pursuant to this chapter, or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this chapter or any of such rules, regulations, or orders may be held responsible for such violation as a principal.

(b) Any person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

(c) Nothing in this chapter shall be construed as requiring the Commission or the Commission<sup>1</sup> to report minor violations of this chapter for prosecution, whenever it appears that the public interest does not require such action.

(Sept. 21, 1922, ch. 369, §13, as added Pub. L. 90-258, §26, Feb. 19, 1968, 82 Stat. 34; amended Pub. L. 93-463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97-444, title II, §230, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102-546, title IV, §402(1)(D), (9)(C), Oct. 28, 1992, 106 Stat. 3624, 3625.)

#### AMENDMENTS

1992—Subsec. (c). Pub. L. 102-546, §402(9)(C), which directed that "the Secretary of Agriculture or" be struck out, could not be executed because of amendment by Pub. L. 93-463, §103(a). See 1974 Amendment note below.

Pub. L. 102-546, §402(1)(D), substituted "Commission" for "commission" before "to report".

1983—Subsec. (a). Pub. L. 97-444, §230(1), struck out "in administrative proceedings under this chapter" after "may be held responsible".

Subsecs. (b), (c). Pub. L. 97-444, §230(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (b). Pub. L. 93-463, §103(a), provided for substitution of "Commission" for "Secretary of Agriculture" except where such words would be stricken by section 103(b), which directed striking the words "the Secretary of Agriculture or" where they appeared in the phrase "the Secretary of Agriculture or the Commission". Because the word "commission" was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of "the Commission or the commission" for "the Secretary of Agriculture or the commission".

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

<sup>1</sup> So in original. The words "or the Commission" probably should not appear.